

JPA File No.: 05-117  
AG Contract No.: KR06-0084TRN  
Project No.: S-999-MA-000  
Project: Alternate Traffic Operations  
Center  
TRACS No.: H6951 01X  
Budget Source Item No.: 76607;  
Resource ID # 335  
City ID No.: L CON 07406

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PEORIA

**THIS AGREEMENT** is entered into this date August 14, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PEORIA, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties" and individually as "Party", "State" or "City".

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 11-952 et. seq. and the City Charter Article 1, Section 3(15) to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The parties hereto agree to and acknowledge the following conditions: **a)** The parties shall perform their responsibilities consistent with this Agreement; and **b)** Any change or modification to the Project will only occur with the mutual written consent of the parties.

4. The City of Peoria plans to design, construct, and maintain a new Traffic Management Center, to be located in a new building in the City complex. The City has agreed to incorporate facilities to allow the Traffic Management Center to be used as an alternate Traffic Operations Center (ATOC) for the State, hereinafter referred to as the "Project". The ATOC will be utilized in the event the current State TOC was to be incapacitated. The State will pay an amount, not to exceed \$296,000.00 (capped) for the City to incorporate the ATOC into their design and construction of the new building. The State agrees to pay for ongoing cost of its computer equipment, telecomm charges and recurring cost when the ATOC has been invoked, and which are not normally paid by the City, and will conduct quarterly exercises within the ATOC and has the ability to staff the facility in the event that the TOC is not available. The City agrees to provide and pay for utilities, security access, maintenance and ongoing cost of the building.

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 28360  
Filed with the Secretary of State  
Date Filed: 8/14/06  
James K. Shuman  
Secretary of State  
By: [Signature]

## **II. PURPOSE**

The purpose of this joint exercise of powers and cooperative action (i.e. Agreement) is to allow the State to cost share a percentage/proportion of the City's new Traffic Management Center (i.e. the Project) and allow the State to utilize the City's Traffic Management Center as an alternate TOC in the event the current State TOC is incapacitated.

## **III. SCOPE OF WORK**

### 1. The State shall:

a. Review the design documents required for construction of the Project and provide comments to the City as appropriate for their alternate use of the Project.

b. Upon execution of this Agreement and, upon receipt and approval of an invoice from the City, remit to the City an amount not to exceed \$296,000.00 (capped) for the costs associated with the Project shortly after July 1, 2006 as recommended in the attached ADOT Project Assessment Report.

c. Agree to pay for ongoing cost of "computer equipment, telecomm charges and recurring costs that the State will use", from the ITS Construction funds, Resource ID 335, when the ATOC is completed and operational.

d. Conduct quarterly exercises within the ATOC and in the event the State TOC is incapacitated and have the ability to staff the facility.

e. Not be responsible to provide or pay for utilities, security access maintenance and ongoing cost of the City building.

f. Agree and acknowledge that the new Traffic Management Center, to be located in the new building in the City complex is the sole ownership of the City (with the exception of certain State facilities), and that the City has agreed to incorporate certain facilities to allow the Traffic Management Center to be utilized by the State as an alternate TOC in the event the current State TOC was to be incapacitated. Any equipment owned by the State, will be tagged with an ADOT asset tag.

g. Be responsible for any design consultant and contractor claims for additional compensation caused by Project delays attributed to the State.

h. Provide and maintain an updated list of ADOT authorized personnel by name, for the purpose of the City to manage security access for ADOT staff on a 24/7 basis. Updates will be provided at a maximum, on a quarterly basis to the City.

i. Provide and maintain an updated list of ADOT 24 Hour Emergency contact information, for the purpose of ADOT equipment maintenance. Updates will be provided at a maximum, on a quarterly basis to the City.

j. Coordinate all equipment installations / maintenances with the City of Peoria Engineering Department, Facilities Department, and Information Technology Department.

### 2. The City shall:

a. Prepare (or have prepared) and provide design plans, specifications and other such documents and services required for construction bidding and construction of the Development Services Building for the Project, and submit same to the State for comments as appropriate for their alternate use of the Project.

b. Advertise for bids and award one or more construction contract(s) for the Project. Administer contracts of the Development Services Building for the Project and make all payments to the contractor(s). Shall not be responsible for contractor claims for additional compensation caused by Project delays attributable to the State.

c. Be responsible for any design consultant and contractor claims for additional compensation caused by Project delays attributable to the City.

d. Incorporate or resolve State review comments if applicable to their alternate use of the Project.

e. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Project's Scope of Work. All costs attributable to any engineering change orders requested by the City shall be the sole responsibility of the City.

f. Upon completion of the Project, be responsible to provide and pay for utilities, security access, maintenance and ongoing cost of the building.

g. Not be responsible to pay for ongoing cost of "computer equipment, telecomm charges and reoccurring cost not normally paid by the City".

h. Be responsible--should the City withdraw its proposed plans for whatever reason--, to refund (return) the money the State has paid to the City, unless the reason for the City cancellation is due to the State's failure to comply with its obligations herein.

i. Agrees to dedicate one office for ADOT's sole use to store supplies and equipment. The City further agrees to supply adequate computer room space for ADOT-furnished equipment as recommended in the attached ADOT Project Assessment Report.

j. Agrees to allow ADOT the use of workstations, offices and conference rooms, in the event that the ADOT TOC becomes incapacitated. This shall remain in effect until ADOT can repair the TOC or provide alternate arrangements as recommended in the attached ADOT Project Assessment Report.

k. Allow ADOT employees 24-hour access to the facility for the purpose of conducting quarterly exercises. Exercises may be in the form of either planned events with prior notification or events with no advance notification. Events without advance notifications will occur after the City of Peoria's working hours. (Mon. – Fri. 7:00 A.M. to 6:00 P.M.).

l. Upon execution of this Agreement, invoice the State for \$296,000.00 for the amount of the Project as recommended in the attached ADOT Project Assessment Report.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and payments provided for herein are made. However any provisions for maintenance, provided by the City shall be perpetual. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty (30)-days written notice to either Party. It is understood and agreed that in the event the City cancels this Agreement, the State shall in no way be obligated to maintain said Project.

2. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

City of Peoria  
Attn: City Traffic Engineer  
8401 West Monroe Street  
Peoria, Arizona 85345  
(623) 773-7394  
Fax (623) 773-7248

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Every payment obligation of the State and City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.


11. This Agreement shall be strictly constructed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein.

12. This Agreement contains the entire agreement between the Parties and no statement or promise made by either Party that is not contained in this written Agreement shall be valid or binding; and this Agreement shall not be modified or extended except by written instrument adopted in accordance with the requirements for adopting a new IGA.

13. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein.

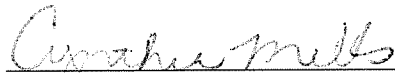
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF PEORIA

By   
~~For~~ John C. Keegan  
Mayor

STATE OF ARIZONA


Department of Transportation

By   
CYNTHIA MILLS  
~~Contract~~ Administrator  
~~Joint Project~~

Approved as to form:

By   
STEPHEN M. KEMP  
City Attorney

ATTEST:

By   
MARY JO KIEF  
Clerk



G:05-117-Peoria-Traffic Mgmt Ctr-2006-slc

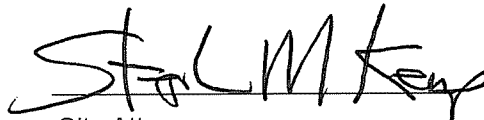
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ATTORNEY APPROVAL FORM FOR THE CITY OF PEORIA

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 12<sup>th</sup> day of July, 2006.

  
City Attorney

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**


**COPY**

CC: 7C  
Amend No. \_\_\_\_\_

Date Prepared: June 28, 2006

Council Meeting Date: July 11, 2006

TO: Terry Ellis, City Manager

FROM:  David A. Moody, P.E., Engineering Director

THROUGH: Jamal Rahimi, P.E., City Traffic Engineer

PREPARED BY: Ron Amaya, Assistant City Traffic Engineer

SUBJECT: Authorize the execution of an Intergovernmental Agreement between the City of Peoria and the State of Arizona Department of Transportation, and approve a budget transfer.

**RECOMMENDATION:**

That Mayor and Council authorize the execution of an Intergovernmental Agreement (IGA) between the City of Peoria (City) and the State of Arizona (State), Department of Transportation, allowing the State to locate its Alternative Traffic Operations Center (ATOC) in the Traffic Management Center (TMC), in the City's new Development Services Building, and approve a budget transfer.

The State will contribute to the City an amount not to exceed \$296,000 for the use of a dedicated office space, and for conducting quarterly traffic incident exercises. Approval of this agreement will not result in an increase to the project budget for the Development Services Building; however, staff requests a budget transfer from the General Fund Building & Improvements, Account Number 1000-0310-540500-CIPOF-PW99999CO, to the Capital Project Outside Sources Building & Improvements, Account No. 4810-4810-540500-CIPOF-PW99999CO.

**SUMMARY:**


In April 2005, the State selected the City, through a competitive selection process, as the location for the State's ATOC. The City was selected over a number of valley agencies, because of its strategic location, and the flexibility to incorporate the ATOC facilities into the new City facilities.

**CITY CLERK USE ONLY:**

- ☒ Consent Agenda
- ☐ Carry Over to Date: \_\_\_\_\_
- ☒ Approved
- ☐ Unfinished Business (Date heard previous: \_\_\_\_\_)
- ☐ New Business

ORD. # \_\_\_\_\_ RES. # \_\_\_\_\_  
LCON# 07406 LIC. # \_\_\_\_\_  
Action Date: 7/11/06

REV. 10/99

TERRY GODDARD Attorney General	 <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA	CIVIL DIVISION TRANSPORTATION SECTION Direct Line: 602.542.8837
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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR06-0084-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 28 July 2006

Terry Goddard  
ATTORNEY GENERAL



James R. Redpath  
Assistant Attorney General  
Transportation Section

JRR:djd:936111